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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 839

WM. LEVIN, HOMER V. TALBOT, C. C. BEENE, ET AL., *Appellants,*

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION TO AFFIRM.

AMOS M. MATHEWS,
GEORGE D. RIVES,
Counsel for Intervening Appellees.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 4605.

T. A. DRAKE, T. C. JACK BURROUGHS, AND WILLIAM HENRY MAGUIRE,

Plaintiffs,

WILLIAM LEVIN, HOMER V. TALBOT, C. C. BEENE, J. C. SMITH, C. B. WOLFE, R. B. TEEL, JOHN STOCKWELL, R. C. WRIGHT, AND A. R. ALLEN,

Interveners-appellants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Defendants-appellees,

NATIONAL BUS TRAFFIC ASSOCIATION, INC., A CORPORATION, WESTERN PASSENGER ASSOCIATION, TRANSCONTINENTAL PASSENGER ASSOCIATION, SOUTHWESTERN PASSENGER ASSOCIATION, NEW ENGLAND PASSENGER ASSOCIATION, CENTRAL PASSENGER ASSOCIATION, AND TRUNK LINE PASSENGER ASSOCIATION,

Interveners-appellees.

MOTION TO AFFIRM.

Filed by Interveners-Appellees.

The interveners-appellees, National Bus Traffic Association, Inc., a corporation, Western Passenger Association,

Trans-Continental Passenger Association, Southwestern Passenger Association, New England Passenger Association, Central Passenger Association, and Trunk Line Passenger Association, move the Court to affirm the judgment of the District Court upon the ground that the questions on which decision of the cause depends are so unsubstantial as not to need further argument.

Neither the evidence received by the Interstate Commerce Commission nor that introduced in the District Court is before this Court. For the limited review of the Commission's order thus permitted appellants present three assignments of error: (1) the delegation of power made by Section 203 (b) of Part II of the Interstate Commerce Act, 49 U. S. C. A. 303 (b), under which the Commission acted, is unconstitutional; (2) the Commission's order violates the Fifth Amendment; (3) change of conditions since the hearing requires reopening of the proceeding.

It is submitted that these assignments present no questions of substance. Each of them is plainly resolved against appellants by the following decisions.

1. Delegation of Power.

Charles Noeding Trucking Co. v. *United States,* 29 F. Supp. 537, 545-546.

Opp Cotton Mills v. *Administrator,* 312 U. S. 126, 144-146.

New York Central Securities Company v. *United States,* 287 U. S. 12, 25.

Intermountain Rate Cases, 234 U. S. 476.

2. The Fifth Amendment.

The Assigned Car Cases, 274 U. S. 564, 575.

United States v. *Delaware & Hudson Co.,* 213 U. S. 366, 416-417.

The Pipe Line Cases, 234 U. S. 548.

3. Change of Conditions.

Illinois Commerce Commission v. *United States*, 292 U. S. 474, 481.

Baltimore & Ohio Railroad Co. v. *United States*, 298 U. S. 349, 389.

Respectfully submitted,

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